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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 267 OF 2019

Dattu @ Dattatray Dashrath Amale	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket Ujwal Nikam ib Aashish Satpute, for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. S. B. Babar, PSI, Vakad Police Station, Pune City - Present

CORAM : P. N. DESHMUKH, J.

DATE : MARCH 1, 2018

PC :-

1. The applicant is involved in crime C.R. No. 244 of 2017, registered with Wakad Police Station, Pune for the offenses punishable under section 302, 504, 506 of Indian Penal Code. Applicant has, therefore, filed this application for bail.
2. Heard learned counsel for Applicant and learned Additional Public Prosecutor. Admittedly, a charge-sheet in the present case is filed. Learned counsel for applicant by referring to the documents annexed with charge-sheet has submitted that Applicant

came to be arrested merely on suspicion, as according to the report, he had strain relations with deceased, as can be revealed from the FIR. It is, however, stated that in the absence of any material evidence establishing Applicant's involvement in the present crime, merely the relations between the deceased and applicant were strained, can be no ground to reject application for grant of bail.

3. Another point which is canvassed is that no test of identification parade of Applicant is held. Though it is case of the prosecution that Ashok Kalokhe witnessed the incident of assault on deceased involving assailants, it is further contended that there is no mention of source of light on the spot, and as such it is stated that physical description of assailants given by said Ashok Kalokhe does not appear to be reasonable for want of source of light as the incident took place at mid-night at 12.05 a.m. In the circumstances, he prays that for want of sufficient evidence establishing involvement of Applicant in the crime, he be released on bail.

4. Learned Additional Public Prosecutor, on instructions of investigating officer Mr. S.B. Babar who is present in the Court, states that no test identification parade is held. However, to connect

involvement of Applicant in the present crime, he has referred to statement of Shri Baljitsingh Lawana, a shopkeeper. According to prosecution case, he sold one sword to Applicant about 9-10 days prior to the incident and is therefore, contended that there is sufficient evidence to establish involvement of Applicant in the crime.

5. In the background of submissions advanced as aforesaid, and from the perusal of contents of report, it is clear that relations between Applicant and deceased were not cordial, as according to complainant, Applicant was working under the supervision of her deceased husband in a company and since he was in habit of demanding loan, their relations were not cordial and therefore, few days prior to the incident, in March, 2015 Applicant had assaulted deceased and also abused him on phone.

6. In the background of above submissions, it is case of complainant that on 23.5.2015 at about 8.10 p. m. while deceased was in the company, he had informed that Applicant had phoned him from somebody else's mobile phone saying that why deceased was avoiding to receive his phone call and he has extended threats and abused him. She further stated that on that day her husband did not return till 12.30

in the night. At that time, two police constables along with one Sunil Pawar, their neighbour, came to their house and informed the complainant that her husband was assaulted by unknown persons and he was admitted in YCM hospital for treatment. Complainant, therefore, visited the said hospital and lodged a report for the offenses, which came to be registered.

7. A bare perusal of the report as aforesaid does reveal that said report came to be lodged against the Applicant. Only on suspicion, as relation between the deceased and the Applicant were not cordial prior to the incident. Admittedly, there are no eye witnesses to the incident. According to the provisional death certificate probable cause of death is “stab injury to chest”.

8. From the statement of Ashok Kalokhe, it reveals that he has witnessed the incident of assault on deceased Balaji by two persons at around in the night of 23.5.2015 at about 12.05 and he had identified that assailants wearing T-shirts, chocolate coloured pants, aged between 20 to 25 years. Said witness, however, could not identify the assailants but has identified the deceased Balaji.

9. With reference to contents of his statement, it is contended on behalf Applicant that in the absence of source of light, it is difficult to rely upon contents of statement of said Ashok Kalokhe. However, on perusal of spot panchanama, it is noted that there is specific mention of source of light as Kalokhe's outer side house. Though, there is mention of source of light as aforesaid, no identification parade is held. Documents filed with the charge-sheet, in fact, reveal that on 21.8.2015 a correspondence is entered into with resident Tahsildaar and Executive Magistrate, Haweli for holding Test Identification Parade. However, it appears that it is not further pursued. In the circumstances, fact remains that there is no Test Identification parade, which thus do not establish involvement of Applicant as one of the assailants of the deceased.

10. Learned Additional Public Prosecutor by referring to statement of Balajitsingh Lawana made an attempt to establish that prior to the date of incident, Applicant had purchased sword from the shop of said Balajitsingh on the pretext to gift it

to one of his friend friend, however, it is not the case of the prosecution that alongwith the Applicant said weapon sword was also confronted to Balajitsingh for its identification, though, the said sword was attached under panchanama dated 24th May, 2015. In that view of the matter, evidence relied by the prosecution as aforesaid, also do not establish involvement of Applicant as one of the assailants.

11. Having considered case of the prosecution, as well as evidence against Applicant, it appears that the same does not establish involvement of Applicant in the crime. Hence, following order :-

- (i) Application is allowed;
- (ii) Applicant be released on bail on his executing P.R. bond in the sum of Rs.25000/- with one surety in the like amount;
- (iii) Applicant shall attend Wakad Police Station on 1st day of each month pending the trial;
- (iv) Applicant shall not tamper with witnesses;
- (v) It is made clear that learned Trial Court shall not get

influenced by any of the observations made hereinabove, and shall independently evaluate the evidence at the trial;

- (vi) Bail application is accordingly disposed of in the aforesaid terms.

Sd/-
[P. N. DESHMUKH, J.]

Vinayak Halemth